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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,907	07/23/2001	Peter Chow	2017P/F0994	4194
7590	02/28/2006			EXAMINER PATEL, NIKETA I
KELLY K. KORDZIK, WINSTEAD SECHREST & MINICK P.C. 5400 RENAISSANCE TOWER 1201 ELM STREET DALLAS, TX 75270			ART UNIT 2181	PAPER NUMBER

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/911,907	CHOW ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Niketa I. Patel	2181	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 November 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 November 2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/7/05, 10/21/02</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) The invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by *Bullman* et al.

U.S. Patent Number: 6,928,057 B2 (herein after referred to as “*Bullman*”.)

3. Referring to claims 1-9, *Bullman* teaches a method for communicating a Physical Layer (PHY) mean square error (MSE) to an upper layer device driver, comprising the steps of: (a) receiving a frame by the PHY [see column 5, lines 31-33, 40-49]; (b) computing a MSE for the frame by the PHY [see column 6, lines 13-17, ‘piggyback packet’ and column 7, lines 49-52 and column 8, lines 25-44, ‘mean square error value’]; sending the MSE and the frame to a Media Access Control (MAC) [see column 5, lines 55 and figure 3, elements 330, 328]; (d) inserting the MSE into a frame status frame (FSF) associated with the frame by the MAC [see column 2, lines 48-55 and column 6, lines 18-235]; and (e) sending the frame and the FSF to the upper layer driver software [see column 6, lines 36-43.]

Although *Bullman* teaches a use of HPNA [see column 5, lines 20-39] to convey and receive data packets between communications devices, *Bullman* is silent regarding the

limitations of (f) extracting the MSE from the FSF by the upper layer driver software; and (g) computing an average mean square error (AMSE) based on the MSE by the upper layer software; (g1) computing the AMSE for a history window of frames by the upper layer driver software; (h) comparing the AMSE with a range of AMSE values for a payload encoding; (i) transmitting at the PE if the AMSE is within the range; and j) negotiating a change in the PE if the AMSE is not within the range. However these features are deemed to be inherent to the *Bullman* method since the Applicant's Admitted Prior Art (AAPA) teaches that the above listed steps (f-j) are various capabilities of HPNA [see AAPA page 2, lines 5-22.]

#### ***Response to Arguments***

4. Applicant's arguments filed 11/07/2005 have been fully considered but they are not persuasive. The applicant argues that the *Bullman* reference does not teach (1) computing a MSE for the frame by the PHY and (2) inserting the MSE into a frame status frame (FSF) associated with the frame by the MAC, at pages 8-9 of the remarks section. The examiner respectfully disagrees with these arguments.

**As per the first argument,** *Bullman* teaches computing a MSE for the frame by the PHY [see column 2, lines 21-23 and figure 3, element 335 column 6, lines 13-17, ‘piggyback packet’ and column 7, lines 49-52 and column 8, lines 25-44, ‘mean square error value’ – the generator, which is part of the physical layer, generates a piggyback packet which includes the MSE value.]

As per the second argument, *Bullman* teaches inserting the MSE into a frame status frame (FSF) associated with the frame by the MAC [see column 2, lines 48-55 and column 6, lines 18-35, as applicant noted that the piggy back packet passes though the MAC layer subsystem without substantial modification, column 6, lines 25-35 – i.e., modification is taking place.]

*Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

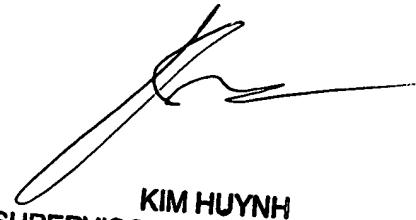
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niketa I. Patel whose telephone number is (571) 272 4156. The examiner can normally be reached on M-F 8:00 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Huynh can be reached on (571) 272 4147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NP  
02/17/2006



KIM HUYNH  
SUPERVISORY PATENT EXAMINER  
2/17/06